

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **RFA No.350/2006**

Date of decision: 4th July, 2007.

JAGMOHAN SINGH Appellant

! Through: Mr. D.P. Sharma, Advocate

Versus

\$ DARYAO SINGH KHATRI Respondent.

^ Through: Mr. S. S. Chillar, Advocate

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CORAM :

HON'BLE MR.A.K. SIKRI

HON'BLE MS.JUSTICE ARUNA SURESH

- (1) Whether reporters of local paper may be allowed to see the judgment?
- (2) To be referred to the reporter or not?
- (3) Whether the judgment should be reported in the Digest ?

A.K. Sikri, J. (Oral)

1. Against the appellant herein, respondent herein, filed a suit for recovery under Order XXXVII CPC for a sum of Rs.4.00 lacs along with interest and cost. In the plaint it is alleged that the respondent had given a loan of Rs.4.00 lacs to the appellant and for re-payment of the said loan, the appellant had given two cheques dated 15.6.2000 and 20.6.2000 for Rs.1.85 lacs and Rs.2.15 lacs respectively and the said cheques were dis-honoured on presentation. The respondent also served a notice dated 18.7.2000 upon the appellant under Section 138 of the Negotiable Instruments Act, but it did not bear any results and, therefore, he filed the suit in question. The appellant was allowed leave to contest the claim. Thereafter a written statement was filed; on the basis of pleadings, issues were framed; the parties led their

evidence; and ultimately vide judgment and decree dated 17.2.2006, the learned trial court has decreed the suit in the sum of Rs.4.00 lacs along with interest @6% per annum from 1.8.2000 till realization. Cost is also awarded. Challenging this judgment and decree, the present appeal is filed.

2. The appellant has taken the plea in his written statement that the suit was barred under Section 3 of The Punjab Registration of Money Lenders' Act, 1938 (hereinafter referred to as the said Act) inasmuch as the respondent was not registered as a money-lender and was not having any license under the said Act. Issue No.1 was framed on this plea of the appellant, which has been decided against the appellant holding that since the appellant is a trader and the loan was advanced by a trader to a trader, it would not constitute 'loan' within the meaning of Section 2(7) of the said Act and, therefore, the said Act would not be applicable. Learned counsel has referred to the testimony of the respondent wherein he has, inter alia, stated that the respondent had retired from the services of Municipal Corporation of Delhi and his source of income were the service benefits and agriculture. On this basis, he submits that the respondent could not be termed as a 'trader'. He further submitted that in his cross-examination, the respondent clearly admitted that he had given loan to three more persons, though without interest and, therefore, money advanced to the appellant was not the single transaction and the respondent should be treated as money-lender within the meaning of Section 2(8) of the said Act and, thus, was under obligation to obtain license under the said Act. He further submitted that the suits and the applications by money-lenders are barred unless money-lender is registered and licensed, which is a clear mandate of Section 3 of the said Act.

3. As defined in Section 2(8) of the said Act, a person is to be treated as a money-lender if he is carrying on the business of advancing loans and if he is not in possession of any license, the suit filed by such money-lender is barred. As per the definition under Section 2(7) of the said Act loan means an advance whether secured or unsecured of money or in kind at interest and shall include any transaction which the Court finds to be in substance a loan. However, seven kinds of transactions are specifically excluded from the applicability of Section 2(7) of the said Act. These transactions are not treated as loans. One of such clause is clause (vii) which excludes the following transaction:

“(vii) an advance made on the basis of a negotiable instrument as defined in the Negotiable Instrument Act, 1881, other than a promissory note.”

4. Since the advance in the present case was made on the basis of a negotiable instrument, i.e., the appellant had issued two cheques which are negotiable instrument other than promissory note as defined under the Negotiable Instrument Act, 1881, the suit filed under Order XXXVII CPC was based on these two negotiable instruments. The transaction in question cannot be treated as 'loan' as defined under Section 2(7) of the said Act. When the transaction is excluded as loan, the provisions of the said Act shall not be applicable. Though the learned trial court is wrong in holding that the respondent was a trader and, therefore, covered by clause (vi) of Section 2(7) of the said Act, however, since the matter is covered by clause (vii) of Section 7 of the said Act, result of issue No.1 would remain the same. The suit filed by the respondent was not barred under the provisions of The Punjab Registration of Money Lenders' Act, 1938.

5. The only other submission of learned counsel for the appellant was that the appellant had taken a loan of Rs.15,000/- only and had given 15 blank signed cheques to the respondent as security of the said loan. The submission is that the respondent mis-used two cheques by

filling amounts of Rs.1.85 lacs and Rs.2.15 lacs respectively. This submission is rightly rejected by the learned trial court while deciding issue No.2 holding that it is unbelievable that against an advance of Rs.15,000/- the appellant would give as many as 15 cheques, that too blank cheques. The relevant portion of the discussion contained in the impugned judgment is as under:

“Except bald suggestions, nothing has been brought in the cross-examination to discard the statement of the plaintiff. The Defendant was required to establish that the blank signed cheques had been handed over by him on Oct. 1994. The defence of the Defendant is not acceptable. He wants this court to believe that for an amount of Rs.15,000/- allegedly taken by him in Oct. 1994, the plaintiff had taken 15 blank signed cheques. The Defendant wants to make this court believe that he is so simple that after alleged payment of 16,500/- in March 1995 he had allowed the plaintiff to keep the 15 blank signed cheques. The plea that the cheque book from out of which the two cheques in question had allegedly been issued, was handed over to him by the bank in June 1993, does not support his plea. A man may not use the cheques issued to him by the bank. It depends on the individual as to in what manner he makes use of the cheques. There can not be any presumption that all cheques of the cheque book issued in 1993 should have been exhausted/utilized in 1993 itself. The statements of account Ex.DW2/3 and 2/4 indicate that the Defendant had not made use of the cheques even upto 2001. The last cheque bearing no.871636 was of Jan. 1996. If the plaintiff was to indulge in falsehood, he would have filled in all the 15 cheques and compelled the Defendant to pay a huge amount.”

6. We are in agreement with the aforesaid conclusion arrived at by the learned trial court. No other argument was addressed.

7. We do not find any merit in this appeal, which is, accordingly, dismissed.

A.K.SIKRI, J.

ARUNA SURESH, J.

July 04, 2007
'sp'

